IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.267 OF 1998

The Commissioner of Income-tax,
Kolhapur .. Applicant.
V/s.
M/s.Naik Seafoods Pvt.Ltd. .. Respondent.

Mr.A.S. Rao for the applicant.

Mr.Pramod Vaidya with Mr.S.N. Inamdar for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 11TH OCTOBER, 2005.

P.C. :

1. Heard the learned counsel for the applicant. The Tribunal has referred following questions for the opinion of this Court reading as under :-

> 1. Whether in the facts and in the circumstances of the case, the Tribunal was justified in directing the Income-tax Officer to allow depreciation on the cost of the assets without deducting from the cost of the assets the cash subsidy received by the assessee ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there is no direct relationship between the amount of subsidy and the actual cost of the fixed asset of the assessee firm ?
>
> 3. Whether on the facts and in the circumstances of the case, the Tribunal was justified to appreciate that the term of 'actual cost' as defined in sec.43(1) of the I.T. Act, 1961, according to which 'actual cost' means the actual cost of the asset to the assessee, reduced by that portion of the

cost thereof, if any, as has been not directly or indirectly by any other person or authority ?

2. As regards question No.1 and 2 are concerned, the learned counsel for the Revenue fairly states that the issues raised is answered by the Apex Court in the case of **CIT V/s. P.J. Chemicals Ltd. [(1994) 210 ITR 830 (SC)]** in favour of the assessee and against the revenue.

3. So far as question No.3 is concerned, the learned counsel for the revenue fairly states that the issue has already been answered by the Division Bench of this Court in the case of **CIT V/s. Menezes Farmago [(199) 236 ITR 780 (Bom)]** in favour of the assessee and against the revenue.

4. In this view of the matter, all the questions stand answered in affirmative for the reasons stated in the cases cited supra.

5. Reference, accordingly, stands disposed of with no order as to costs.

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